

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**TYLAN LUCAS,**

**Defendant.**

**CASE NO. 8:04CR44**

# MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's pro se motions to amend judgment (Filing No. 237) and for hearing (Filing No. 238).

The Court previously denied the Defendant's motion brought under 28 U.S.C. § 2255. (Filing Nos. 234, 236.) The Defendant filed the motions now before the Court, requesting the following: an alteration or amendment of the Judgment under Federal Rule of Civil Procedure 52(b) (Filing No. 237); and an evidentiary hearing under Rule 8(a) of the *Rules Governing Section 2255 Proceedings* (Filing No. 238).

**Filing No. 237 - Alter or Amend Judgment**

In the motion to alter or amend judgment, the Defendant reargues claims already raised in the § 2255 motions. The motion is denied.

**Filing No. 238 - Hearing**

The Defendant argues that he is entitled to a hearing under Rule 8(a) of the *Rules Governing Section 2255 Proceedings*. Rule 8(a) provides, with emphasis added: “*If the motion is not dismissed*, the judge must review the answer, any transcripts and records of prior proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.” Therefore, only if a motion survives initial review under Rule 4(b) of the *Rules Governing Section 2255 Proceedings* does the Court reach the

determination under Rule 8(a) whether to hold an evidentiary hearing. In this case, the § 2255 motion was summarily denied on initial review and, therefore, the Court did not reach the issue of a hearing. The motion for a hearing is denied as moot.

IT IS ORDERED:

1. The Defendant's pro se motions to amend judgment (Filing No. 237) and for hearing (Filing No. 238) are denied; and
2. The Clerk is directed to mail a copy of this memorandum and order to the Defendant at his last known address.

DATED this 23<sup>rd</sup> day of April, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge